BAIL SLIP

The Appellant heein/Accused namely Govindaraj S/o. Thangavelu was directed to be released on bail in and by order of this Courrt dated 3.7.2001 and made in Crl.M.P.No.3569/2001 in Crl.Appeal.No.492/96.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2005

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR

and

THE HONOURABLE MR JUSTICE A.KULASEKARAN

Criminal Appeal No. 492 of 1996

Govindaraj ... Appellant

Vs

The State of Tamil Nadu
rep. by. Inspector of Police,
South Police Station, Tiruppur.
(Cr. No.1016 of 1994) ... Respondent

Prayer: Appeal against the judgment passed by the learned Principal Sessions Judge, Coimbatore, in S.C.No. 111 of 1995 dated 30.04.1996.

For Appellant : Mr.G.Karthikeyan

For Respondent : Mr.S.Jayakumar
Addl. Public Prosecutor.

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J U D G M E N T

(Judgment of the Court was delivered by N.DHINAKAR,. J)

The appellant was tried under Sections 498-A and 302 I.P.C. and the allegation against him is that he demanded dowry from his wife Shanthi on 15.9.94 by asking her to get jewels and cash amounting to Rs.50,000/- for the purpose of expanding his

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business and that at 4.00 a.m. on 16.9.94, he caused her death by pouring kerosene and throwing a lighted match stick, as a result of which, she suffered 100% burn injuries and died at 5.25 p.m. on 16.9.94 at Government Hospital, Tiruppur, where she was admitted for treatment. The learned trial Judge, finding the appellant guilty under Section 498-A I.P.C., sentenced him to three years rigorous imprisonment and for the offence under Section 302 I.P.C., he was sentenced to imprisonment for life. The appeal challenges the conviction and sentence.

2. The case of the prosecution is as follows:

The deceased is the wife of the appellant and she is the daughter of P.W.3. About ten years prior to the date of incident, the deceased was given in marriage to the appellant and for about six months, they lived happily. Thereafter, the appellant started asking for various items from his in-laws house. When the deceased was seven months pregnant, the marriage of the brother of the deceased was settled and for the betrothal ceremony, the appellant was invited. He did not attend the betrothal ceremony, but sent only the deceased. Six months after the birth of the child, the appellant did not even care to take back his wife from her parents house and he married another woman without the knowledge of anyone. On coming to know of this, the deceased filed a case against the appellant and the appellant was convicted and sentenced to pay a fine of Rs.3,000/-. He filed an appeal against the said conviction and sentence. The deceased also filed a petition seeking maintenance and it was ordered. But the appellant did not pay any amount towards her maintenance. The father of the deceased was admitted in a hospital on account of illness and P.W.3 was in the hospital along with her husband. The deceased used to attend the Courts in connection with the cases, which were pending between her and her husband and during such period, the appellant was able to convince the deceased that she could live happily with him. P.W.3 did not object to the deceased going along with the appellant, since she was particular that her daughter should live happily with her husband. Accordingly, the deceased went along with the appellant. The appellant, though had taken the deceased to his house, was not maintaining his family and when the deceased was pregnant by seven months, she gave a complaint at the police station complaining about the conduct of her husband in not maintaining the family. That was on 15.4.94. The police officers called him and advised him to pay atleast a sum of Rs.500/- to the deceased and the appellant agreed to pay the amount. After the birth of the child, the husband of P.W.3 passed away and the deceased left for her husband's house, where she stayed for a month, as the appellant was not taking care of the family. The deceased returned to the house of P.W.3 and after leaving the child to her mother, went back to her husband.

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3. On 16.9.94, P.Ws.1 and 2, the neighbours, heard the cries of the deceased Shanthi. They came out of the house and found the appellant coming out of the house with flames on his person. The appellant threw the kerosene tin, which he was having in hand, in front of the house of P.W.1. P.W.1 attempted to put down the fire on the appellant, during which he suffered burn injuries. They went inside the house and saw the deceased in flames and they poured water and put down the fire. They questioned the deceased as to what transpired and she informed them orally that her husband, the appellant, poured kerosene and threw a lighted match stick on her. She was placed in an auto and sent to Government Hospital, Tiruppur, where she was examined by P.W.7 at 6.00 a.m. The doctor noticed 100% burns all over her face, full of scalp, all over the front of chest, both arms - full, both thighs - front and back, both lower limbs and both buttocks leaving a small area genitals free. Ex.P.11 is the copy of the accident register. When the doctor questioned as to how she suffered injuries, she informed him that she suffered burn injuries when her husband poured kerosene and threw a lighted match stick. She was admitted as an in-patient. The doctor sent Ex.P.10, intimation, to the police authorities. The appellant also appeared before the said doctor and the doctor found 60% burns over his face extending upto back of neck, lower abdomen, upper 1/2 of right thigh, penis, whole of buttocks back side, lower aspect of back and fingers of both hands. Ex.P.9 is the copy of the accident register and Ex.P.8 is the intimation sent by him to the police station.

4. On receipt of the intimation, P.W.13, the head constable attached to Tiruppur South Police Station, proceeded to the hospital and on being identified by the doctor, questioned the injured Shanthi. She gave a statement. The said statement is Ex.P.23. The said statement was recorded in the presence of P.W.8, who appended his certificate. P.W.13 returned to the police station with Ex.P.23 and registered a case in Crime No.1016 of 1994 against the appellant under Section 307 I.P.C. by preparing express reports. Ex.P.24 is a copy of the printed first information report. The express reports were despatched to the higher officials and investigation was taken up by P.W.14, the Inspector of Police.

5. In the meantime, an intimation was sent by the doctor to the Judicial Magistrate, on receipt of which, P.W.11, the learned Judicial Magistrate No.1, Tiruppur, proceeded to the hospital and reached it at 9.10 a.m. He questioned the injured Shanthi and she gave a statement implicating her husband as the person, who poured kerosene and set fire to her. The said statement is Ex.P.19, in which, the doctor, P.W.8 appended his certificate.

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6. P.W.14, on taking up investigation in the crime, went to the scene of occurrence and after examining the place, prepared an observation mahazar, Ex.P.5. He drew a rough sketch, Ex.P.26. He seized the blood-stained articles, which were at the scene, M.Os.1 to 15, under a mahazar, Ex.P.6. At about 11.00 a.m., M.O.2, the shirt, produced by P.W.1, was seized under a mahazar, Ex.P.1. P.W.1 was questioned and his statement was recorded. P.W.1 was referred to the hospital with a memo, as he had burn injuries on his person and on being referred, he appeared before P.W.9, who treated him and found I Degree burns around 0.5% over the right pectoral regions. The doctor issued Ex.P.16, the copy of the accident register. At 5.25 p.m. on the same day, an intimation was received by P.W.13 that Shanthi, who was undergoing treatment for burn injuries at Government Hospital, Tiruppur, died and on receiving the death intimation, Ex.P.15, the crime was altered to one under Section 302 I.P.C. Ex.P.25 is the express report in the altered crime. P.W.14 questioned P.Ws.2, 3, 6 and other witnesses and recorded their statements. On receipt of the information that the crime was altered to one under Section 302 I.P.C., he arrested the appellant Govindaraj, who was undergoing treatment as an in-patient at Government Hospital, Tiruppur. He was remanded to judicial custody by the Magistrate. The inquest over the body of Shanthi was conducted between 6.00 a.m. and 9.00 a.m. at Government Hospital, Tiruppur, on 17.9.94 in the presence of panchayatdars, during which, P.Ws.1 to 3 were questioned and their statements were recorded. Ex.P.27 is the inquest report. After the inquest, the body was handed over to a police constable with a requisition, Ex.P.17, to the doctor for autopsy.

7. On receipt of the requisition, P.W.10, the Assistant Surgeon attached to Government Head Quarters Hospital, Tiruppur, conducted autopsy and found the following external injuries:-

> "Burn injury of the entire body involving the face, scalp hair, front and back of chest, upper limbs, front of abdomen except a circular area 15 cm. in diameter below the umbilicus back of abdomen, external genitalia and both lower limbs."

The doctor issued Ex.P.18, the post-mortem certificate, with his opinion that the deceased died on account of shock and haemorrhage due to extensive burns and death would have occurred about 18 hours prior to autopsy.

8. P.W.14, in the meantime, questioned the doctors, P.Ws.7, 8 and 10 and recorded their statements. He sent the material objects to Court with a request to send them for analysis. He again questioned P.Ws.7 and 9, the two doctors, on 24.1.95 and 30.1.95 and after the completion of investigation, he filed the final report against the appellant on 24.2.95.

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9. The appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him. He denied all the incriminating circumstances and stated that on the date of incident he and his wife went to condole the death of his brother-in-law and after returning to the house, had sexual intercourse and thereafter, he went to bed. According to him, suddenly he woke up with burn injuries on him and his wife held him tightly by not allowing him to get up from the bed, but he managed to get up and thereafter, he came out of the house after wearing the dhoti and went to the hospital in an auto. He has also stated that he made arrangements to bring his wife to the hospital in an auto. He did not examine any witness on his side.

10. The cause of death of Shanthi is not in dispute. She died on account of burn injuries stands established through the evidence of the doctor, P.W.10, who conducted autopsy and who issued Ex.P.18, the post-mortem certificate. Therefore, we hold that Shanthi died on account of burn injuries.

11. The prosecution, before the trial Court, to establish that Shanthi suffered burn injuries at the hands of the appellant, relied upon the oral statement made by the deceased to P.Ws.1 and 2, who are the neighbours, immediately after the incident, the statement made by her to the doctor, P.W.7, when she was produced before him for treatment, the oral statement made by her to her mother, P.W.3, when she visited her as well as the statement, Ex.P.23, given by her to P.W.13, the head constable of Tiruppur South Police Station and the statement, Ex.P.19 given by her to the Magistrate, P.W.11, at 9.30 a.m. We have perused the evidence of P.Ws.1 to 3. P.Ws.1 and 2 are the neighbours of the deceased and their evidence shows that at about 4.30 or 5.00 in the morning of 16.9.94, on hearing the distressing cries of the deceased, they came out of the house and saw the appellant coming out of the house with burns on his person and that they saw the deceased in flames inside the house. According to her, they put down the fire by throwing water over the body of the deceased and when questioned, she told them that her husband poured kerosene and threw a lighted match stick. It is their further evidence that she was placed in an auto and sent to the hospital, where she appeared before the doctor, P.W.7 at 6.00 a.m. and that she was treated. The doctor, P.W.7, in his evidence, stated that when she appeared before him, she had burn injuries and that she was in a fit condition to talk. He has further deposed that when he questioned as to how she suffered burn injuries, she told that her husband poured kerosene and set her ablaze. Therefore, the evidence of P.Ws.1 and 2, who are independent witnesses, as well as P.W.7, an official witness, indicate that the deceased was in a fit condition to talk and made oral statements to all the three persons immediately after the occurrence that the appellant poured

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kerosene and threw a lighted match stick on her person. We have no reason to reject the evidence of any of the above three witnesses, as they had no animosity against the appellant to give false evidence. P.W.3, the mother, when visited her daughter at the hospital, was also informed by the deceased that her husband was responsible for the burn injuries on her person. After the deceased was admitted, an intimation was sent to the police authorities as well as to the Magistrate by the doctor and it was the head constable, who reached the hospital at 7.30 a.m., to whom the deceased gave a statement, Ex.P.23, on the basis of which, the crime came to be registered. In the complaint, Ex.P.23, the deceased has implicated her husband as the person, who poured kerosene and threw a lighted match stick. Similarly, P.W.11, the Judicial Magistrate No.1, Tiruppur, on receipt of the requisition from the hospital authorities, went to the hospital and recorded the statement of the deceased, wherein also the deceased has implicated her husband as the culprit. Both the documents, Ex.P.23 given to the head constable, P.W.13 and Ex.P.19, the statement given by her to the Judicial Magistrate, P.W.11, were certified by the doctor, P.W.8, that the deceased was in a fit condition to give a statement and the statement was recorded in his presence. We have no reason to reject either the evidence of P.W.13 or the evidence of a judicial officer, P.W.11. Therefore, we accept the statements, Ex.P.23 and Ex.P.19, as the statements of the deceased admissible under Section 32 of the Evidence Act, as they relate to the cause of death of Shanthi and hold that the appellant caused the burn injuries on his wife by pouring kerosene and throwing a lighted match stick.

12. The contention of the appellant through his counsel that the occurrence had taken place in an accident on account of the bursting of stove when he attempted to light it, is falsified by the recitals found in the observation mahazar, Ex.P.5, prepared by the investigating officer, P.W.14, which is a contemporaneous record. In the observation mahazar, Ex.P.5, the officer has stated that he found a pump stove in a good condition in the kitchen. The recitals further show that the mattress, pillows and the bed sheet were found burnt, which indicate that the deceased suffered burn injuries while she was sleeping and the said fact corroborates the statement made by her that while she was sleeping, her husband poured kerosene and set her ablaze by throwing a lighted match stick. In fact, the stove is mentioned as Item No.12 in Ex.P.6, the mahazar prepared for the seizure of articles from the scene of occurrence and a perusal of Ex.P.6 shows that the stove was in a good condition and therefore, the statement of the appellant that the occurrence took place on account of the bursting of stove cannot be true. The false statement given by the appellant is yet another circumstance connecting him with the crime.

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13. The discussion made above, therefore, shows that the deceased was consistent that the appellant poured kerosene and set her ablaze and we have no reason to reject her oral statements made to P.Ws.1 and 2 immediately after the occurrence and the oral statement made by her to the doctor, P.W.7, when she was produced before him as well as Ex.P.23, the statement made by her to P.W.13, the head constable and the statement, Ex.P.19, made by her to P.W.11, the Judicial Magistrate. These statements conclusively establish that the appellant poured kerosene and set fire to his wife and came out with a false version before the doctor, P.W.7, that he suffered burn injuries on account of bursting of stove, which fact was not stated by him when he was examined under Section 313 Cr.P.C., since he came out with a different version by stating that he went to bed on the previous night and woke up with flames and his wife held him tightly in order to prevent him from leaving the place. The burn injuries found on the appellant stands established by the statement of the deceased, who has stated in the dying declaration that when she went up in flames, she hugged her husband. The injuries found on the appellant, which could be seen from Ex.P.9, copy of the accident register, indicate that the statement of the deceased that she hugged her husband must be true, as the appellant has suffered injuries on the back of neck, abdomen, upper 1/2 of right thigh, penis, whole of buttocks back side, lower aspect of back and fingers of both hands. The parts of the body, on which the burn injuries were noticed by the doctor, indicate that he must have been suffered the burn injuries when the deceased hugged him when she was in flames.

14. We, therefore, reject the defence theory and accept the prosecution version and hold that the trial Court was right in convicting the appellant. The appeal deserves to be dismissed and it is, dismissed accordingly. It is reported that the appellant is on bail. The appellant shall surrender to the bail bonds and if not, the learned Sessions Judge shall take steps to take him into custody and then, send him to jail to serve the remaining period of sentence.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Principal Sessions Judge, Coimbatore.
2.The District Collector, Coimbatore.
3.The Director General of Police, Chennai.
4.The Superintendent, Central Prison, Coimbatore.
5.The Inspector of Police, Tiruppur South Police Station.
6.The Public Prosecutor, High Court, Madras.
7.The Judicial Magistrate, Tiruppur.
8.-do- through The Chief Judicial Magistrate, Coimbatore.
+ 1 CC to Mr.G.Karthikeyan, Advocate SR NO 3163

Crl.A.No.492 of 1996
27.01.2005

SMK(CO)
GP/2.2.

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